



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

October 31, 2005

REGISTERED MAIL
RB 253 008 457 US

Gene and Margaret Lapin
2944 East Bay Drive NW
Gig Harbor, WA 98335

RE: Water Quality Certification Order #2857 and Coastal Zone Management Consistency
Determination, for Corps Public Notice 200400990 to construct a six-foot wide by 150-foot long
marine railway in Wollochet Bay, Puget Sound, Pierce County, Washington

Dear Mr. and Mrs. Lapin:

On June 10, 2005, Gene and Margaret Lapin submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed marine railway. The project proposes to construct a six-foot wide by 150-foot long marine railway extending from the existing boat house into Wollochet Bay. The railway will be supported by 30 ten-inch PVC pipes filled with concrete within the mean higher high water (MHHW) line. The Corps of Engineers issued a public notice on July 1, 2005 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

This letter also serves as the State response to the Corps of Engineers. If you have any questions please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Perry J. Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office

PJL:LO:dn
Enclosure

cc: Olivia Romano, US Army Corps of Engineers, Seattle District
David Molenar, WDFW
Wynnae Wright, WA DNR
Mojgan Carlson, Pierce County



**IN THE MATTER OF GRANTING
A WATER QUALITY
CERTIFICATION TO
Mr. Gene and Ms. Margaret Lapin**
in accordance with 33 U.S.C. 1341
FWPCA § 401, RCW 90.48.120
RCW 90.48.260 and WAC 173-201A
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**ORDER 2857
Corps No. 200400990
To construct a marine railway and
install thirty concrete-filled PVC
pipes within Wollochet Bay, Pierce
County, Washington**

TO: Mr. Gene and Ms. Margaret Lapin
2944 East Bay Drive NW
Gig Harbor, Washington 98335

ATTN: Mr. and Ms. Lapin:

On July 1, 2005 a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project will involve the construction of a six-foot wide by 150-foot long marine railway extending from the existing boat house into Wollochet Bay, in Puget Sound at 2944 East Bay Drive NW, Gig Harbor, Pierce County, Washington. The work will also involve the installation of 30 ten-inch PVC pipes filled with concrete within the mean higher high water (MHHW) line. The rails will be supported every ten feet by a pair of concrete-filled PVC pipes. These supports will be buried 2.5 feet into the substrate and will support the rails six inches above the beach.

For purposes of this Order, the term "Applicant" shall mean Mr. Gene and Ms. Margaret Lapin and their agents, assigns, and contractors.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and,
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the project as proposed and conditioned will meet water quality standards and other applicable requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions contained within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1 Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 10, 2005. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order. Within 30 days of receipt of an updated JARPA Ecology will determine if a modification to this Order is required.
- A2 This Order shall be withdrawn if the U.S. Army Corps of Engineers does not issue a Section 10 and Section 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that Ecology determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.
- A3 This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A4 For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest regional Office, Attn: Federal Permit Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall be identified with Order No. 2857 displayed.
- A5 The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A6 Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by Ecology personnel, the construction superintendent, construction managers, and lead workers, state and local government inspectors.
- A7 Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- A8 This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A9 Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. No Further Impairment of Existing Water Quality:

- B1. This segment of Puget Sound (WRIA#15) is a Class AA water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project. This order does not authorize temporary exceedences of water quality standards beyond the limits established in WAC 173-201A-110 (3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

C. Timing:

- C1. In water work shall be subject to the timing limitations imposed by the Washington Department of Fish and Wildlife's Hydraulic Project Approval Number: 100190-1, issued to the Gene and Margaret Lapin on December 15, 2005.

D. Notification Conditions:

- D1. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at least fourteen (14) days prior to the start of work below the ordinary high water mark of Puget Sound.
- D2. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
- D3. The Applicant shall ensure that all appropriate supervisors, project engineers and contractors at the project site shall have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment #A for an example) from each supervisor, project engineer, and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the project site.

NOTE: These notifications shall include the applicant's name, project name, project location, the number of this Order, contact and contact's phone number

E. Construction Conditions:

- E1. Work in or near waters of the state shall be done so that it minimizes turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control best management practices suitable to prevent exceedances of state water quality standards shall be in place before starting work at the impact sites.
- E2. Appropriate Best Management Practices (BMP's) will be implemented during the filling of the pipes to prevent spillage and ensure that the concrete does not come into contact with the water or aquatic bed.
- E3. No existing shoreline material (i.e., logs, rocks, gravel cobbles, woody debris or other bed material) shall be relocated or used as bulkhead armor, as fill, or for any other purpose

except that bed material located exactly where the new pilings and footings are to be placed may be relocated.

- E4. All construction debris shall be properly disposed of upland so that it cannot enter a waterway or wetland or cause water quality degradation to state waters.
- E5. Machinery and equipment used during construction shall be serviced, fueled, and maintained in a manner to prevent contamination to surface waters.
- E6. Wash water containing oils, grease, or other hazardous material resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains. Equipment that is not barge-mounted and will be in contact with waters of the State must be cleaned before coming on-site.
- E7. No wood, metal, or concrete preservatives, paints, sealers, glues, epoxies, chemicals, or other substances harmful or toxic to fish or shell fish shall be applied to the pier system once it has been placed within or over the OHWM of Puget Sound.

F. Water Quality Monitoring and Reporting Conditions:

- F1. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or their contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at the Southwest Regional Office at (360) 407-6926 of the exceedances.
- F2. If the results of the monitoring shows that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.
- F3. Any changes to the monitoring requirements must be approved in writing by Ecology.

G. Emergency/Contingency Measures:

- G1. Any in-water work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:
 - G1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - G1b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.
 - G1c. Submit a written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- G2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.

Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608

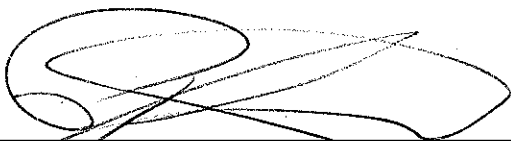
In addition, please send a copy of your appeal to:

Loree' Randall
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information. Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 31 October 2005 at Lacey, Washington



Perry J. Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology – Southwest Regional Office

Attachment # A
Water Quality Certification, Order # **2857**
Statement of Understanding

I, _____, state that, I will be involved as an agent or contractor for Gene and Margaret Lapin in the construction of a marine railway within Wollochet Bay, Pierce County. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #**2857** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

